

Senate Bill 163

January 27, 2009

Presented by Chris Smith

Senate Fish and Game Committee

Mr. Chairman, members of the committee, for the record I am Chris Smith, Deputy Director of Montana Fish, Wildlife and Parks (FWP). I am here today in opposition to SB 163.

In adopting statutes related to rule-making, the legislature has appropriately set different standards for administrative rules and annual or biennial rules that govern hunting, fishing and trapping. Administrative rules, which are typically developed and adopted by departments (i.e., bureaucrats), remain in effect permanently once they are adopted. These rules can have significant and long-lasting social and economic impacts on the human environment. Accordingly, the Montana Administrative Procedures Act and the Montana Environmental Policy Act spell out detailed requirements agencies must meet before adopting an administrative rule. The law also provides that an oversight committee or 15 legislators can also require an economic impact statement be prepared before an administrative rule is adopted.

In contrast, seasonal rules governing hunting, fishing and trapping are adopted by a citizen commission, appointed and confirmed by elected officials. The commission, in a very real sense, is the "voice of the people" and their decisions represent the best form of self-governance. These seasonal rules are adopted annually or biennially and, by definition, can only remain in effect for one or two years, then must be reconsidered.

The rules governing hunting, fishing and trapping must invariably balance the biological capacity of fish and wildlife populations with the social goals and objectives people have for those populations. Environmental factors such as weather, land use, disease or predation affect the size and biological productivity of the fish or wildlife population. Social, cultural and economic factors affect both the desired outcomes and the means by which those outcomes are sought. These environmental and social factors are, to some degree, unpredictable and subject to change.

Given the dynamic and complex nature of fish and wildlife management, the legislature has delegated governance of hunting, fishing and trapping to the FWP Commission, with the expectation that the FWP Commission will carefully consider all the biological and social implications of its decisions before reaching a conclusion.

The FWP Commission has requested, and FWP has provided, economic information related to season setting in the past. Outfitters, landowners and business owners often appear before the FWP Commission or submit written testimony that the commission considers in making decisions. It is not necessary or advisable to impose the same requirement on the seasonal rules adopted by the FWP Commission as on administrative rules adopted by agencies.

Typically, FWP holds 40 to 50 public meetings across the state to gather input from citizens when hunting seasons are being considered. FWP also takes hundreds or thousands of written and email comments and the FWP Commission accepts public testimony during its regular

meetings. Few, if any, other decision-making processes are as open or transparent as setting hunting, fishing or trapping rules. Given the way seasonal rules are adopted, and the fact that they must be reconsidered at least biennially, FWP does not believe it is necessary or advisable to add the requirement for a formal economic impact statement to this process.

There is one other difference between administrative rules and the FWP Commission's seasonal rules that has consequences related to adopting SB 163 that should be considered. Unlike administrative rules, delays in decision-making for hunting, fishing or trapping rules do not maintain the status quo. Unless a hunting, fishing or trapping rule is adopted, there will be no season, because the statutes provide that fish and wildlife may only be taken as provided by FWP Commission rule and the rules expire after one or two seasons.

If the seasonal rules proposed by the FWP Commission are subject to the requirement for an economic impact statement, such a request could delay decision-making for trapping or lion hunting, for example. The Committee may want to consider what sort of unintended consequences might follow from adding this requirement to a process that, by its nature, must be relatively flexible and efficient.

FWP recommends that the Committee table SB 163 and allow the FWP Commission to continue its decision-making process as currently authorized under the law.